



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS

Gerald C. Mann

~~PRICE-DANIEL~~

ATTORNEY GENERAL

Honorable D. C. Greer
State Highway Engineer
Texas Highway Department
Austin, Texas

Dear Sir:

Opinion No. 0-4910
Re: Construction of the
Certificate of Title
Act as applied to liens
on accessories created
prior to May 3, 1941.

You have requested an opinion of this department in answer to the question of whether the Texas Highway Department should require evidence of satisfaction of all first liens on accessories which were recorded on titles prior to the effective date of House Bill 205, 47th Legislature, Regular Session, before issuing title to a purchaser at foreclosure proceedings brought under the first lien on the motor vehicle. That is, can the Highway Department disregard entirely all first liens on accessories placed on record against motor vehicles with the Department of Public Safety prior to May 3, 1941?

Your request of October 5, 1942, since it cites the legislative act and opinions of this department, and in the interest of saving time, will be copied in full herein, to-wit:

"Reference is made to Opinion No. 0-1261 dated September 18, 1939 wherein you advised the Department of Public Safety that it was the opinion of your Department that liens placed only on tires, radios, parts and accessories should be noted on the certificate of title as 'liens on the motor vehicle' under section 24-G of House Bill 407, Acts of the 46th Legislature, 1939.

"Further reference is made to your opinion No. 0-2467 dated July 2, 1940 wherein you informed the Department of Public Safety that:

"The lien of the vendor of the tire, tube, or other accessory is a first lien against such article and is superior to the lien of original vendor of the motor vehicle to which said accessory is attached. This is true even though the original mortgage on the motor vehicle contains an 'after acquired property' clause.

"It is the opinion of this Department, therefore, that the Department of Public Safety may not issue a certificate of title on a motor vehicle upon affidavit of re-possession without noting on said certificate of title the first lien of the vendor of the tires, radio, or other accessory which is attached to the motor vehicle unless the applicant for the new certificate of title who is the purchaser at the foreclosure sale produces evidence before your Department that such first lien against such automobile accessory has been satisfied."

"House Bill 407, Acts of the 46th Legislature, 1939, known as the Certificate of Title Law, became effective October 1, 1939. After that date and prior to May 3, 1941, the effective date of House Bill 205, Acts of the 47th Legislature, which amended House Bill 407 many thousands of first liens on accessories were recorded as such on the official records of the Certificate of Title Division of the Department of Public Safety. It was the practice of the Department of Public Safety, in line with opinion No. 0-2467, to require first liens on accessories either to be released or carried forward on all re-issued titles after once having been recorded.

"On May 3, 1941 the administration of the certificate of title act was by the terms of House Bill 205, Acts of the 47th Legislature, R. S., transferred from the Department of Public Safety to the Texas Highway Department. Since that time the act has been administered by this Department. Section 8 of House Bill 205, Acts of the 47th Legislature, which reads as follows:

"Section 8. That a new section to be known as 1-A be added to read as follows: Sec. 1-A; The provisions of House Bill 407, Chapter 4, Acts of the 46th Legislature, Regular Session, and as by this act amended, shall not apply to the filing or recording of a lien or liens which are created only upon tires, radios, heaters or other automobile accessories."

has been interpreted by this Department to mean that from and after the effective date of House Bill 205 first liens on tires, radios, heaters or other automobile accessories may not be recorded with this Department as such upon the title of any motor vehicle, but that liens on tires, heaters and other automobile accessories may be recorded upon

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the title of such motor vehicles as a second lien against the vehicle itself. This Department has also interpreted the amended act to provide that all of those first liens on tires, radios, heaters and other automobile accessories which were properly recorded under opinion No. 0-2467 and prior to the effective date of House Bill 205 are good and valid first liens on such accessories and we have required the purchaser at the foreclosure sale and who is applying for title to produce evidence before this Department that such first lien against such automobile accessory has been satisfied before issuing title on his application.

"Our position in this matter has been challenged and we would be pleased to have your opinion on whether we should require evidence of satisfaction of all first liens on accessories which were recorded on titles prior to the effective date of House Bill 205, before issuing title to purchaser at foreclosure proceedings brought under the first liens on the motor vehicle. To state the question differently, may we disregard entirely all first liens on accessories placed on record against motor vehicles with the Department prior to May 3, 1941?"

We believe you have properly construed the Certificate of Title Act, as amended by House Bill 205.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Eugene N. Catlett
Assistant

ENG:XP:jrb

APPROVED DEC. 22, 1942
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
By HWB, Chairman